THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10507 OF 2001 AND
CONTEMPT CASE NO.247 OF 2006

27.06.2006

WRIT PETITION No.10507 OF 2001

Between

K.Pedda Rajaiah and others

....Petitioners

And

The Joint Collector, Ranga Reddy District and others.

....Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10507 OF 2001 AND
CONTEMPT CASE NO.247 OF 2006

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COMMON ORDER:

This order shall dispose of both the matters as the contempt case arises out of interlocutory proceedings in the main writ petition.

The writ petition is filed by sons of late Pochaiah assailing the order of the first respondent, dated 07.04.2001, in purported exercise of jurisdiction under Section 9 of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (for short, the Act). Their case is as follows. The land admeasuring Acs.10.38 guntas in survey No.64, situated at Fatheullaguda village of Uppal Mandal in Ranga Reddy District (hereafter called, the subject land) originally belonged to one Narsinga alias Narsiga, who was the pattadar. He had two sons, namely, Chandraiah and Pochaiah. The petitioners are sons of Pochaiah and respondents 3 and 4 are sons of Chandraiah. After death of Narsiga, Chandraiah and Pochaiah were shown as pattadars in Sethwar in 1952. Pochaiah died in 1960 and Chandraiah in 1977. After the death of Chandraiah, respondents 3 and 4 appears to have obtained succession and mutation in their favour exclusively. The petitioners allege that the then Tahsildar, without conducting any enquiry and without issuing any notice to the petitioners granted mutation in favour of respondents 3 and 4. But in 1979, there was a family understanding wherein it was agreed that three petitioners would get Acs.1.04 guntas each, and the remaining extent of Acs.7.26 guntas will be given to respondents 3 and 4. Accordingly, necessary entries were made in Record of Rights recognising the petitioners as owners and pattadars in respect of Acs.3.12 guntas of land and rythu pass books were issued.

In 1995, respondents 3 and 6 filed the revision petition under

Section 9 of the Act alleging that they are the absolute owners of the subject land and that the names of the petitioners were erroneously mentioned in the revenue records as pattadars along with the respondents. The petitioners herein filed a counter affidavit opposing the revision petition *inter alia* contending that they are entitled for half share in the property being sons of Pochaiah - the younger son of late Narsiga; that after death of Chandraiah, in stead of giving half share in the property, due to family understanding they got Acs.3.12 guntas of land. They also questioned the maintainability of the revision petition under Section 9 of the Act on grounds more than one. After considering the rival claims, the first respondent allowed the revision petition, which is impeached herein.

Respondents 1 and 2 have not filed any counter affidavit. Respondents 3 and 4 have filed the counter affidavit opposing the writ petition. They took a stand that their father Chandraiah was absolute owner and possessor of entire extent of subject land, that after his death, they succeeded to the property and got their names incorporated in the revenue records as pattadars, that the subject land is not joint family property and that the names of the petitioners were incorporated in the revenue records during
1985-1986 to 1992-1993 without notice to them, and therefore, they filed the revision petition under Section 9 of the Act.

Learned counsel for the petitioners submits that the exercise of jurisdiction by the first respondent after lapse of about fifteen (15) years is improper and that even though no period of limitation is prescribed by Section 9 of the Act, the revisional authority has to exercise jurisdiction within a reasonable time. He placed reliance on the decision of this Court in **Sri Bhavanarishi Co-operative House Building Society v Joint Collector, Ranga Reddy District**[1]. Secondly, the learned counsel would urge that the first respondent merely surmised that the succession was granted to respondents 3 and 4 by the Tahsildar without verifying whether the petitioners were totally excluded from succession to property of Narsiga and that there was a family understanding in October, 1979. Lastly, he contends that all the documents considered by the first respondent show that the property was owned by joint family of Narsiga and that Chandraiah and Pochaiah along with their father Narsiga was enjoying the property.

Learned counsel for respondents 3 and 4 submits that Chandraiah alone was the owner of the land and that after his death, respondents 3 and 4 succeeded to the property. He would urge that the alleged understanding in 1979 is illegal and has no legal validity

and that revenue entries do not finally decide the ownership rights. He would also point out that the scope of Certiorari jurisdiction is very limited, and therefore, these questions cannot be gone into by this Court. He placed reliance on **Surya Dev Rai v Ram Chander Rai**[2] and **Ranjeet Singh v Ravi Prakash**[3].

In the background facts and rival submissions, two questions would emerge for consideration. Whether it was not proper for the first respondent to exercise jurisdiction under Section 9 of the Act after a period of more than ten years? And secondly, whether the first respondent has committed any illegality by not considering or improperly considering the documents relevant for the purpose of resolving the dispute?

Insofar as the first point is concerned, the law is well settled. Section 9 of the Act does not prescribe any time for exercising revisional jurisdiction by Collector. Indeed, the said provision confers *suo motu* powers on the first respondent to call for the record in relation to a decision rendered by the Revenue Divisional Officer or Mandal Revenue Officer and examine the same with reference to legality, regularity and correctness. When a provision does not prescribe any period and confers powers, such power has to be exercised within a reasonable time. This rule draws its sustenance from another principle that any statutory power conferred by Act of Parliament must be exercised within a reasonable time. In **State of Gujarat v Patel Raghav**[4], **M/s Hindustan Times v Union of India**[5] and **Jai Mangal Oraon v Mira Nayah**[6], the Supreme Court explained the principle. In **Sri Bhavanasi Co-operative House Building Society** (supra), this Court considered this aspect of the matter and laid down as under.

> … Section 9 of the ROR Act confers *suo motu* powers of revision on the Joint Collector in relation to an order passed by a recording authority Mandal Revenue Officer or the Revenue Divisional Officer. It does not say that the Joint Collector can exercise the power of revision at any time. The Act also describes the scope of power when it says that the Joint Collector can modify, words "at any time" are conspicuous by their absence, and it cannot be said that the Joint Collector can exercise power of revision without any point of time limit. In the absence of the words "at any time", it must be held that *suo motu* power of revision must be exercised within a reasonable time.

In this case, as seen from the counter affidavit filed by the petitioners, they have not specifically raised the plea of limitation.

Unless and until the Joint Collector first considers this aspect of the matter with reference to the documents of the case, it would not be proper for this Court to express any opinion as to whether the power was not exercised within a reasonable time. But the fact remains that even as per the impugned order, the Pahanis from 1980, 1985-1986 to 1992-1993 admittedly show the names of the petitioners as pattadars and occupants of the land. This coupled with the allegation that there was a family understanding in 1979 in which the petitioners got Acs.3.12 guntas would certainly throws up an issue for consideration by revisional authority. The original authority shall have to consider the same.

Insofar as the second point is concerned, after perusing the impugned order, which gives an analysis of the revenue records like Sethwar, Vasul Baki, Sesala Pahani and Pahanis *prima facie* show that the legal heirs of two branches were enjoying the property. Curiously, the Joint Collector ignored the documents in favour of the petitioners as not authoritative but considered same documents as supporting the case of the respondents 3 and 4. This is certainly an error. This Court is inclined to take such a view having regard to an admission made by respondents 3 and 4 in their counter affidavit, which is to the following effect.

> It is respectfully submitted that after the death of Kattapaka Narsing who was the grand father of the respondents 3 and 4 and the writ petitioners. Half share of the property of Kattapaka Narsinga has fallen to the share of K.Chandraiah that is the father of the respondents 3 & 4 herein and half share have fallen to late Pochaiah that is father of the Writ Petitioners.

The first respondent in the impugned order observed that even prior to implementation of the Act and issue of pattadar pass books, succession was sanctioned in favour of respondents 3 and 4, and therefore, the subsequent entries in the record of rights are illegal. The learned Assistant Government Pleader has produced before this Court the original file, which does not contain any proceedings or document showing that succession was granted by the Tahsildar in favour of respondents 3 and 4, though the document at page No.11 (Faisalpatti) contains an endorsement at column 12 that pattadar expired, and therefore, Tahsildar granted succession to legal heirs. It is the case of the petitioners that after the death of Narsiga (their grandfather) and Pochaiah (their father), Chandraiah as Karta of the Joint Family was dealing with the property, and therefore, it is not clear from such endorsement that succession was granted to the contesting respondents exclusively. This Court, however, hastens to add that this

requires further probe as a question of fact and also the impact of such succession on the right of the petitioners with reference to other revenue records as well as family understanding set up by them. These matters are not at all adverted to by the first respondent.

For the above reasons, this Court is of considered opinion that the first respondent shall have to consider all aspects of the matter once again keeping in view the observations made hereinabove. Therefore, the writ petition is allowed and the impugned order is set aside. The matter is remitted to the first respondent with a direction to consider the matter afresh after hearing both the parties on the question of limitation in invoking the revisional jurisdiction, on the question of exclusive ownership of Chandraiah and on the question of validity of the family understanding in 1979 as well as record of rights and other entries from 1980 onwards. This exercise may be completed within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed and there shall be no order as to costs.

Insofar as the contempt case is concerned, learned counsel for respondents 3 and 4 has filed photographs to show that respondents 3 and 4 have removed what all rock structures that were on the disputed land and that no further activity is being undertaken. In view of the orders passed in writ petition, this Court is of considered opinion that respondents 3 and 4 be warned to be more careful in obeying the Court orders.

The contempt case is accordingly closed. No costs.

(V.V.S.RAO,J)

27.06.2006
pln

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[1] 2002 (5) ALD 398

[2] AIR 2003 SC 3044

[3] (2004) 3 SCC 682

[4] AIR 1969 SC 1297 = (1969) 2 SCC 169

[5] AIR 1988 SC 688

[6] (2000) 5 SCC 141